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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
		1129-US-DIV	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] or via the Office electronic filing system. on <u>October 11, 2007</u> Signature <u>Maureen Capozzi</u> Typed or printed name <u>Maureen Capozzi</u>		Application Number 09/518,221	Filed March 2, 2000
		First Named Inventor Fletcher	
		Art Unit 2143	Examiner David E. England
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. 48,485 Registration number _____</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <p><input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.</p>			

 Signature
Andrew J. Curtin Typed or printed name
508.323.1330 Telephone number
<u>11-OCT-2007</u> Date

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Fletcher, et al.

Serial No.: 09/518,221

Group No.: 2143

Filed: March 2, 2000

Examiner: England, David E.

For: DISTRIBUTED REMOTE MANAGEMENT (dRMON) FOR NETWORKS

I hereby certify that this correspondence is being transmitted to the United States Patent and Trademark Office via the Office electronic filing system in accordance with §1.6(a)(4) on:

Date of transmission: October 11, 2007

Maureen Capozzi
Signature: Maureen Capozzi

Pre-Appeal Brief

MAIL STOP: AF
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The Applicants hereby submit the reasons for our concurrently filed Pre-Appeal Request for Review to the United States Patent and Trademark Office. This Pre-Appeal Brief is in response to the Final Office Action mailed June 19, 2007. Concurrent with the filing of this Pre-Appeal Brief is a Notice of Appeal (Form SB/31), a Pre-Appeal Brief Request for Review (Form SB/33) and a Petition for an Extension of Time for 1 (ONE) month.

1. Status of the Claims

Claims 16-19 are pending in this application. Claims 1-9 and 20 were cancelled. Claims 10-15 and 21-24 were withdrawn from consideration.

Claims 16 and 19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Desai, et al., (U.S. 5,781,703 – “Desai”) in view of Engel, et al., (U.S. 6,115,393 – “Engel”).

Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Desai and Engel as applied to claim 16, and in further view of Dobbins, et al., (U.S. 5,790,546 – “Dobbins”).

2. The Invention captures and analyses traffic flowing to and from each of a plurality of end stations.

The invention performs distributed remote network monitoring (dRMON) in a local area network (LAN) deploying, within each of a plurality of end systems (ESs) to be monitored, executable code comprising an dRMON agent associated with the ES configured to communicate with a dRMON proxy connected to the LAN, each dRMON agent implementing RMON functional groups but only capturing and analyzing packets transmitted and/or received by the ES as explicitly recited in claim 16. By only capturing and analyzing packets transmitted and/or received by each ES, it should be understood that the invention monitors traffic performance in the LAN using each of the plurality of ESs as an observation point, as opposed to internal performance within the end-system.

3. “How busy is the CPU?” - Desai analyses processor performance.

Desai describes intelligent agents that monitor the internal performance of the devices in which they reside, such as CPU performance, see, e.g., col. 1, lines 29-31:

In conventional computer performance monitoring applications, the monitoring application generates a request for data, such as “How busy is the CPU?”. This request is

See also, col. 2, lines 6-9:

a Data Server, and a Proxy Controller. The Intelligent Remote Agents receive commands instructing them to collect performance data on the Agent's associated computer system, wherein the commands comprise predicates for

Further, Desai collects processor data only in response to specific SITMON requests to monitor a situation within a device hosting an intelligent agent, see col. 10, lines 31-42, below:

35 Thereafter, an operator on the operator monitoring work-
station 20 issues a situation monitoring request to determine
whether any processes running on Server #1 or Server #2 are
using an inordinate amount of CPU time, i.e., greater than
some threshold value or percentage. The request is trans-
mitted to the Data Server 14, which in turn forwards it to the
Proxy Controller 16. The Proxy Controller 16 creates one or
more commands for the request containing a predicate and
40 sampling interval. The Proxy Controller 16 then transmits
the commands to the Intelligent Remote Agents 18 on Server
#1 and Server #2.

Therefore, it is clear error to assert Desai teaches the claimed "only capturing and analyzing packets transmitted and/or received by the ES" and forwarding "periodically by the dRMON agents, agent data including statistics and/or captured packets to said dRMON proxy." It should be readily understood that Desai performs device monitoring, while the invention monitors, via a plurality of ESs each including a dRMON agent as claimed, traffic across the LAN. Therefore, Desai can never be used to make the invention obvious.

4. Engel describes a probe, not the invention.

Engel fails to cure the defects of Desai. Engel describes a physical device (probe) configured to be inserted in communication lines between other devices to monitor communications between the other devices, see Engel, col. 6, lines 52-65, below:

55 Network Monitor 10 (referred to hereinafter simply as
Monitor 10) is the data collection module which is attached
to the LAN. It is a high performance real time front end
processor which collects packets on the network and per-
forms some degree of analysis to search for actual or
potential problems and to maintain statistical information for
use in later analysis. In general, it performs the following

It is clear error to assert a physical processor inserted in communications lines between networked devices as in Engel can teach dRMON agents deployed in ESs, as claimed. Further, the Examiner's assertion that Engel teaches dRMON agent data is erroneous, see, e.g., col. 27 of Engel, which describes a monitor registering with a management workstation, which is the operator interface for the monitor, see col. 6, line 66 – col. 7, line 9. There is an agent resident in the monitor to communicate with the management workstation, but it should be understood that the monitor agent can never be a dRMON agent deployed in ESs, as claimed. The Engel agent is deployed in a device having the sole purpose of monitoring i.e., a probe. Therefore, the rejection of claim 16 based on the combination of Desai and Engel should be reconsidered and withdrawn. The same is true for claim 19, where the dRMON agents perform continual response time monitoring and forward monitoring results to the dRMON Proxy. There is no suggestion of continual response time monitoring by dRMON agent in either reference.

5. Dobbins can't work in an end system

Dobbins describes a method for secure fast packet switching in which MAC ID of devices sending or receiving packets across the network are recorded by an agents residing in switches in the network and associated with ports on the switches. Dobbins uses the information recorded by the agents to set up virtual connections or virtual LANS in the network in order to ensure varying QoS levels for different sets of devices on the network. As shown in Figures 7A and 7B, the agent resides in a switch, which would never be confused with an ES by a person of ordinary skill in the art. The agents described by Dobbins cannot perform their function if they resided on an ES instead of a switch. The Examiner's assertion that Dobbins has anything to do with dRMON proxies or dRMON is pure conjecture. There is nothing in Dobbins that has anything to do with RMON as in Engel, or the command driven dRMON as in Desai. The same is true for claim 18.

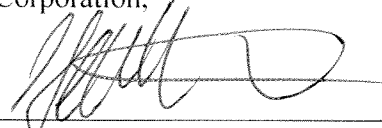
6. Conclusion

It is believed that this application is now in condition for allowance. A notice to this effect is respectfully requested. Should further questions arise concerning this application, the

Examiner is invited to call Applicant's attorney at the number listed below. Please charge any shortage in fees due in connection with the filing of this paper to Deposit Account 50-6350.

Respectfully submitted,
3Com Corporation,

By

A handwritten signature in black ink, appearing to read "Andrew J. Curtin", written over a horizontal line.

Andrew J. Curtin
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